IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

COX COMMUNICATIONS, Petitioner, INSURANCE CO OF THE STATE OF PA c/o BROADSPIRE, Petitioner Carrier, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, ISMELDA PEREZ, Respondent Employee.	)	1 CA-IC 10-0010 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Special Action-Industrial Commission

ICA CLAIM NO. 20062-960022

CARRIER CLAIM NO. 152-8044-LO

Administrative Law Judge JoAnn C. Gaffaney

AWARD AFFIRMED

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By Roger A. Schwartz
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T H O M P S O N, Judge

¶1 Petitioners, Cox Communications (employer) and Insurance Co. of the State of PA c/o Broadspire (carrier), seek special action review of an Industrial Commission of Arizona (ICA) award and decision upon hearing and findings and award for a compensable claim for respondent employee, Ismelda Perez (Perez). For the following reasons, we affirm the award.

I. FACTS AND PROCEDURAL HISTORY

¶2 Perez worked for employer for nine years. In September 2006, she was working as a quality assurance specialist, which required her to type for three hours per day and answer the telephone. Perez developed pain in her hands, forearms, upper arms, and elbows. She received conservative treatment and the carrier terminated benefits in January 2007 without permanent disability.

¶3 In May 2007, Perez began working as an easy pay coordinator doing name changes, which involved less typing and more telephone work. She told her coworkers that she was feeling better. Perez was off work from December 2007 to January 2008. When she returned to work, she performed more typing and developed numbness in her forearms and pain in her elbows, forearms, upper arms, and shoulders. On March 6, 2008, Perez emailed the human resources department safety specialist, Ruddell, stating that she was having difficulties due to pain and numbness in her arms and

legs. In October 2008, Perez filed a petition to reopen, which carrier denied. Perez quit work on December 26, 2008.

¶4 Perez requested a hearing and requested that the petition to reopen be designated as a new injury, with a new date of injury of March 6, 2008. The administrative law judge (ALJ) held a series of formal hearings. A co-worker, Ward, testified that she worked in data entry with Perez and they spent four to five hours on the keyboard. Ward testified she had similar pains to Perez in her arms and shoulders. Ruddell testified that she worked with Perez to make Perez's work station ergonomically sound. Perez's supervisor also testified.

¶5 Dr. Chou, an orthopedic surgeon, testified that he examined Perez on September 10, 2008 for bilateral lateral epicondylitis and reexamined her on October 29, 2008. Perez related her symptoms to her work activities, particularly typing. Dr. Chou recommended an MRI scan and wrote a prescription for an ergonomic chair with armrests. Dr. Chou opined that Perez's complaints were caused in part or in whole by her work activities, to a reasonable degree of medical certainty.

¶6 Dr. Scalise, an orthopedic surgeon, testified that he examined Perez on November 17, 2008 for pain in her right arm and shoulder. Dr. Scalise testified that Perez believed that typing caused her symptoms, and that "there was no specific event that seemed to initiate her pain." Dr. Scalise sent her to complete physical therapy, but Perez reported it had not been helpful.

Perez received a cortisone injection, which helped relieve her symptoms. Dr. Scalise diagnosed rotator cuff tendonitis and stated in his written report that typing exacerbates Perez's symptoms.

¶7 Dr. Lipton, an orthopedic surgeon, testified that he examined Perez on January 17, 2007 for bilateral arm pain and reviewed her medical records. Dr. Lipton diagnosed deconditioned upper extremities, but did not relate this diagnosis to Perez's work activities. On November 3, 2008, Perez was reexamined. He opined that applicant did not have a new, additional, or previously undiscovered condition. He could not find evidence of a new injury. Dr. Lipton further opined that he did not find lateral epicondylitis on his examinations.

¶8 The ALJ issued her decision upon hearing and Findings and Award for compensable claim and denying reopening on October 26, 2009. The ALJ noted that the opinions of Dr. Scalise and Dr. Lipton were in conflict, and adopted the opinion of Dr. Scalise that Perez's symptoms "were exacerbated by her work activities." The ALJ also concluded that there was no medical evidence that causally relates Perez's numbness in hands and feet, pain in her neck, and tremors in her entire body to her work activities. With respect to the March 6, 2008 date of injury, Perez was awarded benefits from October 1, 2008 until such time as Perez's condition is determined to be medically stationary. As to the September 18, 2006 date of injury, the ALJ denied the petition to reopen.

¶9 Petitioners timely filed a request for review. Perez also timely requested administrative review, arguing her benefits should have started on March 6, 2008, instead of October 1, 2008. The ALJ rejected Perez's argument, reasoning it was contrary to the language of the statute, Arizona Revised Statutes (A.R.S.) § 23-1061.L (2010). The ALJ affirmed the award and supplemented her decision as follows:

> [Petitioners] argue that the medical evidence does not support the decision. After careful review of the testimonies of Dr. Chou, Dr. Scalise, and Dr. Lipton, the undersigned finds that the medical evidence supports a compensable claim. Dr. Chou diagnosed bilateral lateral epicondylitis, which he related to [Perez's] work activities. Dr. Scalise diagnosed tendinosis of the right shoulder, which he related to [Perez's] work activities.

¶10 Petitioners filed a timely petition for special action. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) (2003), 23-951(A) (1995), and Rule 10 of the Arizona Rules of Procedure for Special Actions.

II. DISCUSSION

¶11 In reviewing findings and awards of the ICA, we consider the evidence in the light most favorable to upholding the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). "It is the duty of the administrative law judge to resolve all conflicts in the evidence and to draw inferences from that evidence. When more than one inference may be drawn, the administrative law judge may choose either, and we will not reject

that choice unless it is wholly unreasonable." *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988).

¶12 Petitioners argue that "all we have here" is Perez's "subjective complaints of pain without any medical testimony linking her shoulder pathology to her typing activities." The issue presented is, "Is that really all it takes to create a compensable claim?" Petitioners assert that it is our duty to "examine the record to see if Dr. Scalise's testimony establishes that, more likely than not, [Perez's] typing activities caused or aggravated her shoulder pathology."

¶13 However, petitioners ignore the testimony of Dr. Chou altogether and do not argue that the ALJ's decision to draw inferences from the testimonies of Dr. Chou and Dr. Scalise was "wholly unreasonable." Dr. Scalise testified that based upon visualization of the MRI, the various forms of treatment he prescribed, and the recitation of Perez's history, he diagnosed Perez with rotator cuff tendinitis. He also testified that typing exacerbated her symptoms. Dr. Scalise further confirmed that his opinions were "to a reasonable degree of medical probability." Dr. Chou diagnosed Perez with bilateral lateral epicondyles. Dr. Chou opined that Perez's condition could be caused in part or in whole by her work activities, to a reasonable degree of medical certainty. Dr. Lipton diagnosed deconditioned upper extremities, but did not relate this diagnosis to Perez's work activities.

¶14 In light of conflicting medical evidence, the ALJ decided to accept and draw inferences from the testimonies of Dr. Scalise and Dr. Chou. We hold that this decision was not "wholly unreasonable." Therefore, we affirm.

III. CONCLUSION

¶15 For the foregoing reasons, we affirm the ALJ's award and decision upon review.

/s/
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JON W. THOMPSON, Judge

CONCURRING:

/s/
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DONN KESSLER, Presiding Judge

/s/
_____
DANIEL A. BARKER, Judge